1	T	V	T	r	F	D	)	<b>C</b> r	$\Gamma_{L}$	٨	Т	Ŧ	7	C	1	1	T	C	7	T	21	ī	$\mathbb{C}^{r}$	Г	$\boldsymbol{C}$	$\cap$	I	П	R	Т	
		•			٠,		,	•	•	٠.			'41	. 7		•		. 7			•	ı	٠.	•	•	•	,,		•		

## EASTERN DISTRICT OF TEXAS

DWIGHT W. JOHNSON,	§	
Petitioner,	8 8	
versus	§ (	CIVIL ACTION NO. 1:18-CV-514
DIRECTOR, TDCJ-CID,	8 8	
Respondent.	8 §	

## MEMORANDUM ORDER ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Petitioner Dwight W. Johnson, an inmate at the Gist Unit, proceeding *pro se*, brought this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The court referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge recommends this petition be dismissed without prejudice for failure to exhaust state habeas remedies.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and pleadings. No objections to the Report and Recommendation of United States Magistrate Judge were filed by the parties.<sup>1</sup>

Furthermore, the petitioner is not entitled to the issuance of a certificate of appealability. An appeal from a judgment denying federal habeas corpus relief may not proceed unless a judge issues a certificate of appealability. *See* 28 U.S.C. § 2253; FED. R. APP. P. 22(b). The standard for granting a certificate of appealability, like that for granting a certificate of probable cause to appeal under prior law, requires the petitioner to make a substantial showing of the denial of a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000); *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004); *see also Barefoot v. Estelle*, 463 U.S. 880, 893

On December 6, 2018, petitioner filed a memorandum in the above-styled action. The memorandum, however, was signed three days before petitioner acknowledged receipt of the report and recommendation of the magistrate judge and does not contest the findings or recommendation of the magistrate judge.

(1982). In making that substantial showing, the petitioner need not establish that he should prevail

on the merits. Rather, he must demonstrate that the issues are subject to debate among jurists of

reason, that a court could resolve the issues in a different manner, or that the questions presented

are worthy of encouragement to proceed further. See Slack, 529 U.S. at 483-84. Any doubt

regarding whether to grant a certificate of appealability is resolved in favor of the petitioner, and

the severity of the penalty may be considered in making this determination. See Miller v. Johnson,

200 F.3d 274, 280-81 (5th Cir.), cert. denied, 531 U.S. 849 (2000).

Here, the petitioner has not shown that any of the issues raised by his claims are subject

to debate among jurists of reason. The factual and legal questions advanced by the petitioner are

not novel and have been consistently resolved adversely to his position. In addition, the questions

presented are not worthy of encouragement to proceed further. Thus, the petitioner has failed to

make a sufficient showing to merit the issuance of a certificate of appealability. Therefore, a

certificate of appealability shall not be issued.

ORDER

Accordingly, the findings of fact and conclusions of law of the magistrate judge are

correct, and the report of the magistrate judge is ADOPTED. A final judgment will be entered

in this case in accordance with the magistrate judge's recommendation.

SIGNED at Beaumont, Texas, this 22nd day of January, 2019.

MARCIA A. CRONE

Maria a. Crone

UNITED STATES DISTRICT JUDGE